

**Minutes of the
Performance Based Procurement System Task Force Meeting
Utah State Capitol – Room 303
May 18, 2000
1:00 p.m.**

ATTENDANCE

Al Peterson	Associated General Contractors
Alan Bachman	Attorney General's Office
Dale Brinkerhoff	Southern Utah University
Dan Kohler	Daniel Kohler Architects
Elizabeth Mitchell	American Institute of Architects
Frank Child	Project Control
Frank McMenimen	Division of Facilities Construction & Management
Gary Smith	Associated General Contractors
Jeff Price	Association of Builders and Contractors
Jim Paull	Utah Sheet Metal Contractors Association of Utah
Joe Jenkins	Utah State Building Board
Kay Waxman	Utah State Building Board
Keith Davis	Department of Human Services
Ken Adlam	American Institute of Architects
Ken Nye	Division of Facilities Construction & Management
Lewis Wilson	Heath Engineering Company
Lynn Hinrichs	Division of Facilities Construction & Management
Matthias Mueller	Division of Facilities Construction & Management
Neil Spencer	Bennion Associated Engineers
Richard E. Byfield	Division of Facilities Construction & Management
Richard Kirkham	Jacobsen Construction
Robert Bergman	Utah Mechanical Contractors Association
Ross Wentworth	Naylor Wentworth Architects
Shannon Lofgreen	Division of Facilities Construction & Management
Soren Sorenson	American Institute of Architects

Chairman Joe Jenkins called the Task Force meeting to order at 1:10PM.

Approval of Minutes

Meeting minutes of April 26, 2000 were available for distribution. Approval of the minutes was postponed until the next meeting to allow more time for review.

Chairman Jenkins noted some hesitancy had been expressed earlier in using Dr. Kashiwagi's approach. The Task Force resolved to use the approach only as a basis for understanding, and to develop a new approach for use in the State of Utah. He sensed there was also some concern in calling this new approach Performance Based Procurement System, and proposed to develop another name. Some names offered were Value Based Procurement,

Procurement System, Design and Construction Procurement, A/E and Construction Procurement, Objective Based Procurement, Information Based Procurement, and Value Based Construction.

A few opinions were expressed on renaming the system. Lynn Hinrichs offered a new name should be given to differentiate the Performance Based criteria. If the criteria were changed, the new name would identify the new concept. He appreciated the notion of achieving best value for the State, however, he did not think renaming the approach to "Best Value Performance System" or "Best Value Procurement System" was the right direction. Alan Bachman objected the term "performance based" somewhat implies the person who isn't selected is a non-performer, although it should represent the chosen individual represents the best value at that time. Chairman Jenkins agreed and offered he was unsure "procurement system" must be included, as there are several other names to describe a sub-routine in the selection procedure.

Ken Adlam explained a Qualification Based Selection (QBS) is in place for the selection of architects and engineers and is currently being used by the American Institute of Architects (AIA) and the Federal Government. AIA is quite satisfied with the results and wish to continue with their current system. The construction industry, contractors, and subcontractors have expressed they would also like something separate from the A/E community. A separate approach may need to be independently developed for the A/E community and the contracting community and the new name would need to envelop both communities.

No resolution was made regarding the name change and the item was postponed for the next meeting.

Determining Best Value, Weight Factors and a Performance Evaluation System

Chairman Jenkins stated it was not the intent to return to a low-bid system, but to develop a performance based system and policies to determine the new selection process. Another task is to determine the best value for the State of Utah in selecting contractors or teams to perform construction.

An inquiry was made to the State of Hawaii on the development of their current system. They made a decision not to include architects and engineers and applied the system only to general contractors and subcontractors. Values were placed on certain items, which did not specify criteria for product quality. Top contractors were also given a rating of zero and then weighted the factors of management team, price, and previous work performed.

Richard Byfield clarified Hawaii's architectural selection procedure. A short list is developed and then presented to the Governor's office to review for the final selection of A/E. Mr. Byfield also clarified the contractors receive a score of zero in efforts of mitigating the differential. This has caused some discrepancies in separating firms that are only a percent different from

each other. Hawaii has also never used the system for a project over \$250,000. They are also a union driven state and have different issues than Utah in selection procedures.

Chairman Jenkins recognized determining a state valued policy, which will select the value performer, and selecting a performance evaluation system is interrelated. One of the biggest concerns of the contractors and subcontractors is developing an objective and fair performance evaluation system, which eliminates bribery. He asked for each individual to analyze an ideal evaluation process for themselves and owners, which could be accomplished fair and equitably without excluding new companies from becoming involved.

Chairman Jenkins reiterated several individuals have also expressed the rating system is unfair because some have bribed and influenced their raters for better ratings. Lew Wilson proposed submitting a project list with contacts identified, which could be contacted randomly for an objective response. However, there could possibly be liability in making a subjective evaluation of a performer because of the potential backlash. Mr. Wilson suggested if the information were more random and not subject to manipulation, it may be more actualized.

Dale Brinkerhoff identified that qualifications and performance are different. Some consistent items such as total cost vs. budget, number of change orders, percentage of change orders, timeliness, safety record, and payment of subcontractors could assist in measuring value because they are verifiable. Ken Adlam validated the comments and felt it would be useful to use questions which could be quantified and deserve merit. The number of questions on the current survey could be reduced to a manageable size, as well as the scoring system range.

Mr. Adlam did have some difficulty with the quantified answers to questions and revealing information to varied sources. It is fundamentally a good, sound notion to attempt to obtain quantifiable information about past performance, but it is unrealistic and naive to think the answers would be reliable.

Neil Spencer appreciated the personal phone call approach and felt it would be beneficial to check random references for past performance. Coincidentally, Lynn Hinrichs is currently working on a project and implementing these suggestions. The Division of Facilities Construction and Management (DFCM) has developed ten questions, which are applicable to architects, engineers, and contractors, and are using these questions to conduct a telephonic survey. Mr. Hinrichs offered to distribute the survey at the meeting and report back in the future on the information received and its reliability. He also indicated the gathered information would only be used as a tool and would not be used as a final decision-maker in the selection.

Lynn Hinrichs further commented the rating system has been revised to a one through five system, with one being unacceptable and five being exceptional. If a rating is a one or five, the rater is required to give a definition. When the scores are tabulated, they will be presented to the committee to evaluate the remarks and determine if further explanation should be requested. Mr. Hinrichs proposed the Task Force develop a system where DFCM actually tabulates the scores in order to obtain a more professional and timely answer and possibly

save taxpayer's money.

Frank Child felt project quality directly relates more to the owner leadership than the A/E firm or the contractor. Any A/E firm or General Contractor could perform any job if the work scope is well defined, the team organized up front, and the expectations set into place with the owner coordinating the process. He proposed developing categories to measure the quality of a particular firm, such as team availability, proposed management plan, and perceived team commitment, to determine the quality of their performance and experience. He concluded the weighted factor aids with the subjectivity in any selection system and every pre-qualification system has a subjective score.

Lew Wilson commented a sole individual should be identified to conduct the telephonic interview and who was knowledgeable and reputable, possibly DFCM staff. Lynn Hinrichs responded that in the past Arizona State University performed ratings and DFCM received some complaints the University was having students perform the ratings who didn't understand the importance of the ratings. DFCM feels the need to keep the results confidential and treat the process ethically. They currently have the expertise to perform the evaluations appropriately. Daniel Kohler commented DFCM could perform that function, but felt it would be beneficial to have the same person making all of the contacts to eliminate bias. Alan Bachman also suggested the reference be required to sign a faxed statement after the interview stating the interviewer did not misinterpret the statements and a clear record could be obtained.

Ross Wentworth explained he has had the opportunity to participate as a competitor and selection committee member. He feared a point where individuals are forced to sign documents referencing their statements. Mr. Wentworth felt a selection committee could receive a basis for selection, which could be on performance, qualifications, past experience, etc., and allow the committee to determine what needs to be done. He suggested allowing committees to visit past projects or firm offices to aid them in making a selection while acknowledging the State wants performance and qualifications to drive the decision and allow them to determine what is important. He felt when the flexibility is removed from the process, committee members lose their ability to make a good decision and the computer ends up making the choice. He also felt some of the formal criteria could be used up front to help create the short list, but members should be allowed to discuss their feelings while making the decision. Chairman Jenkins agreed and felt the selection committee should be allowed to review other scores as an indication of past performance with the management plan being used as a tool. Richard Byfield challenged this would allow block voting and lobbying. In the performance based system, each committee member scores individually and the scores are then handled mathematically in hopes to reduce deceptive comments and bias made during the voting. Mr. Byfield felt some bias occurs from prejudice when the committee agrees unanimously on the final selection without measure, data or performance, which causes increased change orders throughout the project. He further commented he is not allowed to pay the fees required and only permitted to use a rate table when negotiating. Ross

Wentworth did not agree and felt the State has received a tremendous service from the A/E community over the past number of years by using this system.

Alan Bachman commented the performance survey was developed to be incorporated in a three pronged approach to selection including a management plan and an interview process. He furthered clarified that DFCM is largely responsible for not getting the service desired from the A/E community due to the need for the negotiating and contracting process to be further defined to describe the owner's wishes and expectations and a fair price for the services. Chairman Jenkins felt it is imperative to develop a system that can be agreed upon and the Legislature can understand.

Dan Kohler also agreed there needs to be more to the system than just the questionnaire not be used as a basis for short listing for A/E selection. He felt that the management plan and interview were necessary for the process and should have the highest weights and should be available to tall firms prior to short listing, and that performance evaluations could be conducted after short listing. If a weighting scheme is developed to short list people based on past performance, the majority of the weight is being put on past performance for the selection process and de-emphasizes the management plan and interview.

Al Peterson identified one of the concerns expressed to the Association of General Contractors (AGC) is the expense associated with preparing a management plan. He felt there would be some criticisms associated with having to develop a management plan in its entirety in order to get short-listed. There is a significant expense incurred and those who might not be short-listed would rather have that knowledge earlier on. He felt parties who may not be short-listed should be given the prerogative to submit a management plan. He asked for the expense issue to be considered when the final decision is made.

Bob Bergman reiterated on a previous comment and stated he felt one process should be developed in order to procure services to obtain the best value. Neil Spencer commented although there are some similarities for A/Es in selecting contractors, there are enough differences that one determination would need to be made and then certain issues could be incorporated into the other selection process. He felt the Task Force would need to differentiate between the disciplines in order to come to a conclusion. Chairman Jenkins commented he wished to go through the entire process and then evaluate what will work for A/E selection and what will work for contractor selection.

Chairman Jenkins referred to the performance survey distributed by Lynn Hinrichs. He stated he felt there was some unanimity the proposed performance survey process was better than the process which contractors and subcontractors obtained their own references regardless of how the results were used to establish in the future. After having read the performance survey, Al Peterson felt challenged by the subjective evaluation, however the survey scenario would be allowed some imperical data, which could be discussed or explained. Chairman Jenkins asked the Task Force to evaluate the performance survey and determine if certain

items should be expanded or included. He hoped for the Task Force to resolve approximately 10 questions to be included as part of the selection process and distributed for submittal references. This new form would help eliminate the bar coding and old grading system. If there appears to be some subjectivity, a signature line could be reported on the survey. There were no objections to Chairman Jenkins proposal to proceed with developing a performance survey.

Gary Smith stated the mandatory registry meeting was quite a burden to place on individuals and he felt there could be some way of reducing the amount of references required for the performance survey to a manageable item. Chairman Jenkins agreed and did not feel varied reference amounts to be valid comparisons, however he questioned how to eliminate participants neglecting to report the inadequate jobs.

Chairman Jenkins asked the Task Force to evaluate the performance survey in order to propose suggestions to develop an agreeable form for use throughout the community. Further discussion could be held at the next meeting.

Chairman Jenkins also proposed developing an evaluation to be implemented throughout a project to every entity in order to develop a databank on past performance of State projects. This would allow access to more information to make an informed decision. Lynn Hinrichs commented this would allow access to more data, however information would be limited on those who have not had the opportunity to work with the State previously. Ken Adlam expressed these evaluations should already be implemented in regular construction meetings in an ongoing situation. Chairman Jenkins challenged the Task Force to determine an evaluation method and a process to implement the evaluation without alienating anyone.

Craig Petersen explicated the Task Force would be developing a criteria to have the best process for selection of the best contractor in achieving the best value for the citizens of the State of Utah. He felt a mission concept perspective would be better received by the Legislature and would identify the Task Force is trying to achieve moving away from what is the cheapest to what is the best value. In order to move into that direction, a process needs to be developed to allow selection under a best value scenario of selecting all professionals. He believed an avocation of performance based selection as a process is consistent with qualification based selection. He also stated the Task Force will need to evaluate the aspect of how to make the job run more smoothly while still allowing participants to work together as a team and how to evaluate the process to form a cohesive idea. He felt that evaluations could not be kept secret, and may not be as helpful as hoped. He emphasized and applauded the efforts of the Task Force and felt if they focused on the steps, a good process and proposal that could be marketable to the Legislature.

Chairman Jenkins emphasized he wanted to discuss performance evaluation systems at the next meeting and asked all members to assess the information received today and come back with ideas on how to proceed in the right direction.

Management Plan Process

Chairman Jenkins explained the Task Force received anecdotal comments regarding the management plan process being costly. Because of this, the Task Force must come up with some management plan process guideline, which will still allow for creativity, but does not eliminate participants because of the expense. Chairman Jenkins stressed the Task Force must develop some guidelines defining what is expected in a management plan and identifies the issues or marketing aspects to be included to aid the selection committee the information needed to make their selection.

Al Peterson stated this is the private industry's target. The private industry identifies exactly what the committee wishes to hear which aids in the preparation of pinpointing the required information. Mr. Peterson suggested the criteria should be established by the committee, the using agency, and the owner and outlined to those preparing the management plans to eliminate the guesswork.

Chairman Jenkins outlined the current process requiring firms to submit blind management plans for distribution to the selection committee for review. After review, the selection committee interviews the project manager and team. As an evaluator, Chairman Jenkins did not feel he had the time, inclination, or objectivity to define what should be included in a management plan. However, he did feel DFCM was more informed of what should be included and possibly DFCM could identify what elements need to be identified in the management plan and distribute these guidelines to interested submitters.

Richard Byfield claimed it is critical to remove the bias in performance based selection. Setting criteria would constrain the submittal or process, therefore eliminating liability. The purpose of the management plan is to identify those who understand the project and its responsibilities, by addressing the critical issues, including identifying the risks and how to mitigate the risks.

Ken Adlam offered the management plan context is more independent on the knowledge of the projects. Mr. Adlam suggested the programming stage clarify how the project is going to be managed and documented, and define the specifics.

Dale Brinkerhoff questioned the value of a two-step management plan to allow a generic management plan to be submitted for the selection committee's review for short listing with some reimbursement to those who were short-listed in order to prepare a more detailed, responsive management plan. Ken Adlam commented there is some merit to the two-stage approach for certain projects, especially those where it is anticipated the management plan will be fairly involved. He felt Mr. Brinkerhoff's suggestion was worth some consideration.

Daniel Kohler addressed placing rules on the management plan. Currently, the Statement of Qualifications requires and identifies 10-12 items to be included and the only differentiation

is the qualifications of the firms. The management plan approach distinguishes the firms able to identify the risks and distinguish them from the competition. Limiting this submittal will homogenize the process.

Chairman Jenkins affirmed the Task Force was moving positively ahead. He reminded the Task Force to draft a performance evaluation system and process for the next meeting. He also requested members review the management plan process and decide how to proceed. After those procedures are completed, the Task Force will be able to determine the weight measures for best value and discuss the team approach in preparation or integrating the process.

Other

Chairman Jenkins expressed his appreciation for the comments of the Task Force and the willingness to participate.

The next meeting was scheduled for Thursday, June 8, 2000 at 1:00PM. The meeting will be held in 4112 State Office Building.